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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,602	12/12/2001	Christopher L. Adrien	ERIE-75	5540
26875	7590	02/23/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			CROSS, LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,602

Applicant(s)

ADRIEN ET AL.

Examiner

LaToya C. Younger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1-28-05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5 and 43-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5 and 43-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicants' amendments filed on January 28, 2005.

Claims 5 and 43-57 are pending.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 5 and 43-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisch in view of Tolles.

Fisch discloses a device for examining a sample under magnification. The device comprises a slide substrate (20) for holding a sample specimen and a cover slip (3) for covering the sample. Fisch also discloses a thin spacer layer (23) sandwiched between the cover slip (3) and the slide (2). The space formed by the spacer layer (23) creates a circular sample chamber, in which the sample will remain during examining. See figure 1a and 1b. Fisch also disclose that the cover slip is made of glass and has a thickness of 0.1 – 0.5 mm (col. 3, lines 60-61), which would provide sufficient beam stiffness and allow the reaction of adhesion forces. In use, the user drops a sample into the sample chamber and applies the cover slip to the top of the slide. When the cover slip is applied to the slide, the cover slip is affixed to the thin spacer layer.

Fisch differs from the instantly claimed invention in that the spacer layer of Fisch is not taught as being “a pair of spacer segments” that extends along substantially a full length of a different one of the opposed edges.

Tolles is directed to a slide device for examining samples. Tolles describes a device comprising a slide substrate (11) for holding a sample specimen and a cover slip (13) for covering the specimen. Tolles further teaches the presence of at least two parallel spacers (12) that are raised and support the cover slip (13), creating a chamber (14) between the slide (11) and cover slip (13). In figure 1 the spacers are shown as parallel lands that extend along the full length of the cover slip.

It would have been obvious to one of ordinary skill in the art to use the parallel spaced spacers of Tolles in the device of Fisch to allow the sample to be inserted into the chamber of the slide while the cover slip is attached to the slide. Such would prevent any contamination resulting from inserting the sample and having to place the cover slip on the sample already present in the chamber. Also, because the parallel spacers of Tolles allow the specimen aliquot to spread out by capillary action, a lesser amount of sample will be needed to fill the chamber to an amount sufficient for examining.

With respect to claims 48-52, where particular hybridization materials to be used with the slide and cover slip are recited, the materials worked upon in an apparatus are not sufficiently limiting to impart patentability to the claims. See MPEP 2115.

Response to Arguments

3. Applicant's arguments filed January 28, 2005 have been fully considered but they are not persuasive. With respect to the thickness of the cover slip, Applicants' amended claims recite the cover slip as having a thickness of "at least substantially 1mm". Tolles teaches using a cover slip having a standard thickness. Applicants' specification defines standard cover slips as

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having thicknesses of 0.3-1mm (pages 6-7). The cover slip thickness taught by Fisch is 0.5mm. However, the Examiner still finds this teaching (thickness of 0.5mm) to fall within the realm of "at least substantially 1mm". It should be noted that the phrase "at least substantially" leaves leeway for the thickness to be smaller or larger, as the term "substantially" is relative. Further, the Examiner notes that Applicants' specification defines thicknesses of 0.3-2.0mm as being sufficient thickness. Thus, the Examiner takes the position that the claimed thickness of 0.1mm or more does not provide unexpected results over the thickness taught by Tolles in view of Fisch and is insufficient to overcome the teachings of Tolles in view of Fisch.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya C. Younger whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Thursday 10:30 a.m. - 8:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MONIQUE T. COLE
PRIMARY EXAMINER